Office - Supreme Court, U.S.
FILED
MAR 8 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1331

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LAMAR BARCLAY PINE, SR. AND SHIRLENE TUCKER PINE, DEBTORS, AND MELVIN GILES AND WANDA GILES, DEBTORS;
Petitioners,

vs.

CREDITHRIFT OF AMERICA, INC.,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

LAWRENCE R. AHERN, III
RICHARD J. MCAFEE
Attorneys for Respondent,
Credithrift of America, Inc.

Of Counsel:
MILLER & MARTIN
10th Floor, Volunteer Bldg.
Chattanooga, Tennessee 37402
(615) 756-6600

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTION PRESENTED

Whether the Court of Appeals properly construed 11 U.S.C. §522(f)(2) in refusing to avoid respondent's lien on petitioners' household goods, when the respective states of the petitioners' residence had opted out of the federal bankruptcy exemption scheme in accordance with 11 U.S.C. §522(b) and enacted state exemptions limited to petitioners' equity in their household goods.

TABLE OF CONTENTS

	Page
Opinons Below	1
Jurisdiction	2
Statement	2
Argument	5
Conclusion	14

TABLE OF AUTHORITIES

Cases:

In re Giles, 18 Bankr. 708 (E.D. Tenn. 1982) 1

In re Maddox, 713 F.2d 1526 (11th Cir. 1983) 9-10, 11

In re McManus, 681 F.2d 353 (5th Cir. 1982) 9

In re Pine, 18 Bankr. 711 (E.D. Tenn. 1982) 1

In re Pine, 11 Bankr. 595 (E.D. Tenn. 1981) 1

In re Pine, 717 F.2d 281 (6th Cir. 1983) 5, 8, 9, 13-14

Statutes:

11 U.S.C. §522(b),(d),(f) 5-14

11 U.S.C. §506 9

11 U.S.C. §101 (35) 9

28 U.S.C. §1254 2

Bankruptcy Reform Act 1978, Chap. 7 ..... 3, 12

Bankr. Act 1898, Ch. 541, 30 Stat. 544 (1897-98) (codified at 11 U.S.C. §24) (repealed 1978) 12

Off. Code Ga. §44-13-100(a)(b) 7, 8

Sup. Ct. R. 17 11

Sup. Ct. R. 28 2

T.C.A. §26-2-112 7

T.C.A. §26-2-102 8

Other Authorities:

124 Cong. Rec. H11095 (daily ed. Sept. 28, 1978) 13

Frankfurter, *Some Reflections On The Reading Of Statutes*, 47 Colum. L. Rev. 527 (1947) 14

Hertz, *Bankruptcy Code Exemptions: Notes On The Effect Of State Law*, 54 Am. Bankr. L. J. 339 (1980) 13

H.R. 8200, 95th Cong., 2nd Sess., §522 (1977) 13

Report Of The Commission On The Bankruptcy Laws Of The United States, H.R. Doc. No. 93-137, 93rd Cong. 1st Sess., pt. 2, §4-503 (1973) 12

S. 2266, 95th Cong., 2nd Sess. §522 (1977) 13

No. 83-1331

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LAMAR BARCLAY PINE, SR. AND SHIRLENE TUCKER PINE, DEBTORS, AND MELVIN GILES AND WANDA GILES, DEBTORS;
Petitioners,

VS.

CREDITHRIFT OF AMERICA, INC.,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals in the consolidated cases (Pet. App. 1A-8A) is reported at 717 F.2d 281 (6th Cir. 1983). The district court opinion in *In re Giles* (Pet. App. 11A-22A), is reported at 18 Bankr. 708 (E.D. Tenn. 1982) and in *In re Pine* (Pet. App. 23A-31A), at 18 Bankr. 711 (E.D. Tenn. 1982). The bankruptcy court's opinion in *In re Pine* (Pet. App. 54A-92A) is reported at 11 Bankr. 595 (E.D. Tenn. 1981), while the bankruptcy court's opinion in *In re Giles* (Pet. App. 33A-53A) is not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on September 7, 1983. A petition for rehearing en banc was denied on November 14, 1983 (Pet. App. 9A). The petition for a writ of certiorari was docketed on or about February 9, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT

These two cases were consolidated for purposes of appeal because they contain common legal issues. Both involve the interpretation of 11 U.S.C. §522, the *Pine* case involving the Tennessee exemption statute and the *Giles* case presenting the same question under Georgia law.

The Tennessee Case: Lamar Barclay Pine, Sr. and Shirlene Tucker Pine v. Credithrift of America, Inc.

On December 31, 1980, the Pines, Tennessee residents, filed a voluntary petition under Chapter 7 of the Bankruptcy Reform Act of 1978, listing Credithrift of America, Inc.[1] as a creditor. The debtors scheduled certain household goods and claimed them as exempt property, notwithstanding Credithrift's non-purchase money security interest in those goods.

---

[1] As required by Rule 28, Rules of the Supreme Court of the United States, respondent discloses the following: Credithrift of America, Inc., a Tennessee corporation, is a wholly-owned subsidiary of Credithrift Financial Corporation, which is a wholly-owned subsidiary of Credithrift Financial, Inc., which is a wholly-owned subsidiary of Maryland Casualty Company, which is a wholly-owned subsidiary of American General Corporation.

The Pines filed a complaint in this case seeking to avoid Credithrift's lien under 11 U.S.C. §522(f). The Honorable Ralph H. Kelley, Bankruptcy Judge for the Eastern District of Tennessee, Southern Division, denied Credithrift's motion for summary judgment and on May 26, 1981, ordered that Credithrift's security interest in the household goods was avoided.

On March 22, 1982, the late Honorable Frank W. Wilson, Judge of the United States District Court for the Eastern District of Tennessee, Southern Division, affirmed Judge Kelley's ruling.

The United States Court of Appeals for the Sixth Circuit reversed the lower courts' rulings on September 7, 1983, holding that since Tennessee had "opted out" of the federal exemption scheme and by statute had limited its residents to exemption of their equity only in household goods, the Pines could not use the federal lien avoidance statute to exempt their household goods.

The Georgia Case:
Melvin Giles and Wanda Giles v.
Credithrift of America, Inc.

On November 19, 1980, the Gileses, Georgia residents, filed a Chapter 7 petition under the Bankruptcy Reform Act of 1978, listing Credithrift as a creditor. Credithrift filed a claim listing a nonpurchase money security interest in the Pines' household goods as security for the debt.

The debtors filed a complaint under 11 U.S.C. §522(f) seeking to avoid Credithrift's lien. Again, Credithrift answered and moved for a summary judgment in its favor. Bankruptcy Judge Ralph H. Kelley similarly ordered on May 27, 1981, that Credithrift's lien was avoided.

On March 22, 1982, the late Honorable Frank W. Wilson affirmed this ruling.

On September 7, 1983, the Sixth Circuit reversed, holding that since Georgia had "opted out" of the federal exemption scheme and Georgia law permitted the Gileses to exempt only the equity in their household goods, the Gileses could not utilize the federal lien avoidance statute to exempt their household goods.

ARGUMENT

I. The Court Of Appeals Properly Construed And Applied 11 U.S.C. §522(f)(2) In Refusing To Avoid Respondent's Lien On Petitioners' Household Goods.

The Court of Appeals concluded, despite petitioners' protestations, that section 522(f) of the Bankruptcy Code, 11 U.S.C. §522(f), and section 522(b), 11 U.S.C. §522(b), must be read together; in a state that has "opted out" of the federal bankruptcy exemption scheme by the authority granted by Congress, a debtor may not retain the lien avoidance feature of the federal exemption scheme. 717 F.2d at 284. Rather, Congress deliberately and explicitly gave the states the option of choosing a slate of exemptions for its own citizens, to the exclusion of any federal exemptions; petitioners may not restore this excised feature of the federal exemption statute in the face of Congress' specific prohibition. With this conclusion petitioners disagree, contending that Congress intended section 522(f) and section 522(b) be read in isolation and that the state's power to "opt out" of the federal bankruptcy scheme is subject to this one unwritten exception. The Court of Appeals properly read these subsections together in rejecting petitioners' attempts.

The pertinent portions of the federal statute in question are the following:

> (b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either—
>
> > (1) property that is specified under subsection (d) of this section [the federal list of exempt property], *unless the State law that is applicable to the debtor* under paragraph (2)(A) of this subsection *specifically does not so authorize;* or, in the alternative,
> >
> > (2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of

> the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180 day period than in any other place;
>
> . . .
>
> (f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien *on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section,* if such lien is—
>
> . . .
>
> (2) a nonpossessory, nonpurchase-money security interest in any—
>
> (A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

11 U.S.C. §522 (emphasis added).

This statute should be analyzed in the following three steps:

(1) **Examine section 522(f).** The key portion of this subsection is the language permitting the debtor to "avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section...." Thus, to determine whether such lien "impairs an exemption to which the debtor would have been entitled," one must determine what exemptions the debtor has under subsection (b).

(2) **Examine section 522(b).** In section 522(b), Congress, in a last minute legislative compromise, authorized three alternative lists of exempt property:

(a) The federal "laundry list" outlined in section 522(d);

(b) The federal list as expressly modified by state law;

(c) An exclusive state list of exemptions without any reference to the federal list.

It is undisputed that both Tennessee and Georgia have selected the third alternative and have totally "opted out" of the federal exemption scheme.[2]

(3) **Determination of state law.** Therefore, since state law supplies the applicable exemption list in states that have "opted out" under the authority granted by section 522(b), the final stage of analysis is the determination of the applicable state exemptions. In place of the federal exemptions, Tennessee enacted the following:

---

[2] Tennessee's statute "opting out" provides: "*Exemptions for the purpose of bankruptcy*— The personal property exemptions as provided in other sections of the Tennessee Code Annotated for the citizens of Tennessee, are hereby declared adequate and the citizens of Tennessee, pursuant to section 522(b)(1), Public Law, 95-598 known as the Bankruptcy Reform Act of 1978, Title 11 USC section 522(b)(1), are not authorized to claim as exempt the property described in the Bankruptcy Reform Act of 1978, 11 USC §522(d)." T.C.A. §26-2-112.

Georgia's "opting out" statute is as follows: "Pursuant to 11 U.S.C. Section 522(b)(1), an individual debtor whose domicile is in Georgia is prohibited from applying or utilizing 11 U.S.C. Section 522(d) in connection with exempting property from his or her estate; and such individual debtor may exempt from property of his or her estate only such property as may be exempted from the estate pursuant to 11 U.S.C. Section 522(b)(2)(A) and (B). For the purposes of this subsection, an "individual debtor whose domicile is in Georgia" means an individual whose domicile has been located in Georgia for the 180 days immediately preceding the date of the filing of the bankruptcy petition or for a longer portion of such 180 day period than in any other place. Off. Code of Ga. §44-13-100(b).

> Personal property to the aggregate value of four thousand dollars ($4,000.00) *debtor's equity interest* shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee, and such person shall be entitled to this exemption without regard to his vocation or pursuit or to the ownership of his abode. Such person may select for exemption the items of the owned and possessed personal property, including money and funds on deposit with a bank or other financial institution, up to the aggregate value of four thousand dollars ($4,000.00) *debtor's equity interest.*

T.C.A. §26-2-102 (emphasis added).

Similarly, Georgia provided its debtors with an exclusive exemption scheme:

> (1) The debtor's aggregate interest, not to exceed $5,000 in value, in real property or personal property that the debtor or a dependent . . . uses as a residence . . .; and
>
> . . . .
>
> (4) The *debtor's interest,* not to exceed $200 in value in any particular item, in *household furnishings, household goods, wearing apparel,* appliances . . . that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor. The exemption of the debtor's interest in the items contained in this paragraph shall not exceed $3,500 in total value;

Off. Code of Ga. §44-13-100(a)(1), (4) (emphasis added).

In following the above analysis, the Sixth Circuit properly concluded that "[t]he two legislatures have specifically declined to exempt household goods to the extent that they are encumbered by a lien." 717 F.2d at 283. Instead, by Tennessee's use of the phrase the "debtor's equity interest" and Georgia's

reference to the "debtor's interest," both states precluded a debtor from exempting more than his interest in the property; to the extent that the property is unencumbered by a lien, the debtor may claim the property as exempt. 717 F.2d at 283. However, to the extent that the secured creditor's security interest is equal to or greater than the property's value, the debtor has no equity interest in the property and the property is not exempt.

The Sixth Circuit properly refused to restrict the states' prerogative in opting out by creating an unwritten exception that would limit the states to specifying a particular *item of property* and a corresponding dollar amount; rather, Congress' use of the word "property" in subsection 522(b)(2)(A) ("any property that is exempt under . . . state or local law") means "property" as that term is used by courts and lawyers (*e.g.*, "a bundle of rights") instead of "property" in the layman's sense. The bankruptcy code's sophisticated provisions for splitting a single claim into secured and unsecured portions, for example, 11 U.S.C. §506, or the code's technical definitions of words such as "security," 11 U.S.C. §101 (35), render any attempt at arguing that the bankruptcy code's drafters intended the word "property" this one instance in the layman's sense rather than the legal sense simply incredible. The lawyers who drafted the statute and the legislators who enacted it undoubtedly understood the technical meaning of "property"; the lawyers comprising the court of appeals in this case correctly interpreted and applied that technical meaning.

II. There Is No Conflict Among The Circuit Courts Of Appeal Over Section 522's Meaning Or Application

The principal contention of petitioners is that the Sixth Circuit's decision in this case and the Fifth Circuit's identical decision involving Louisiana law, *In re McManus*, 681 F.2d 353 (5th Cir. 1982), conflict with the Eleventh Circuit's decision in *In re Maddox*, 713 F.2d 1526 (11th Cir. 1983), and that this Court

ought to resolve this conflict. However, a conflict assumes two opposing positions; there are no opposing positions on the federal questions presented by the three above-cited cases; any conflict, and respondent indeed concedes there is one, is over the interpretation of Georgia law only.

The very way in which petitioners begin their discussion of their primary reason for granting certiorari in this case illustrates this point:

> The Court of Appeals, *in construing Georgia law,* held that a Georgia resident may only claim an equity interest in household goods as exempt.... These holdings are in direct conflict with the decision of the United States Court of Appeals for the Eleventh Circuit in *In re Maddox*....That Court, construing the same Georgia and United States statutes in question here, rejected the argument that Georgia has limited its residents' exemption to solely their equity interest in property.... Nothing in the Georgia statute purports to limit the available exemption to the debtors' equity interest. (Pet. App. 6, 7, 8) (emphasis added).

An examination of the Eleventh Circuit's *Maddox* decision indicates that it is precisely this question of state law over which the Sixth and Eleventh Circuits disagree. In the one paragraph opinion in *Maddox,* in which the Eleventh Circuit adopts by reference the district court opinion, the Court states the issue thusly: "The appellant maintains that the *state law exemptions* protected by §522(f) are limited to the equity owned by the debtor in the property." 713 F.2d at 1527 (emphasis added). Elsewhere, in the incorporated opinion, the Court explains:

> The appellant argues that the phrase 'debtor's interest' as it appears in Ga. Code Annot. §51-1301.1(a)(4) must be interpreted to mean only the debtor's equity because it has such a meaning in other subsections of Section 51-1301.1....This court must reject the appellant's narrow interpretation of the phrase 'debtor's interest.'

713 F.2d at 1529, 1530.

The Court is clearly interpreting state law in resolving the case.

The Eleventh Circuit concludes by distinguishing the Fifth Circuit's *McManus* decision, *supra,* not on the basis of a major difference over federal law interpretation, but "because Louisiana, unlike Georgia, enacted a specific provision to avoid the effects of subsection 522(f) *in addition to* "opting out" of 11 U.S.C. §522(d)." 713 F.2d at 1530 (emphasis in original).[3]

Therefore, here is the conflict: the Sixth Circuit in this case read the Georgia statute's phrase "debtor's interest" to mean "debtor's equity interest"; the Eleventh Circuit says Georgia's statute does not mean "debtor's equity interest." This difference is simply a difference in interpretation of Georgia law by federal courts, each deciding a state law question without the benefit of any interpretative Georgia state court decisions. Apart from the serious jurisdictional issues raised by this Court's granting certiorari to resolve this question of conflicting interpretations of Georgia law, this question is simply not a "substantial federal question" or even a federal question at all meriting this Court's limited time and attention. Rules of the Supreme Court of the United States No. 17.

Petitioners' cries of foreboding notwithstanding, the Sixth Circuit's interpretation of Georgia law should have only a limited impact. The state of Georgia is of course in the Eleventh Circuit. It is only by a geographical quirk that the Bankruptcy Court in the Eastern District of Tennessee, Southern Division, sitting in Chattanooga, Tennessee, has jurisdiction over a few Georgia debtors residing just across the state line in northern

---

[3] The Eleventh Circuit notes that "[e]ven if the Georgia legislature had enacted such a provision this court might have chosen not to follow the *McManus* case." 713 F.2d at 1530. Undeniably, this statement is dictum; the court found Georgia had not enacted such a provision so the question was not before the court.

Georgia. The Sixth Circuit's views on this aspect of Georgia law affects only these debtors, with the rest of the state of Georgia presumably subject to either any intervening Georgia state court decision or the Eleventh Circuit's interpretation.

Respondent should also point out that petitioners do not cite a single conflicting court of appeal decision on the *federal* issues involved herein or even on the Sixth Circuit's interpretation of Tennessee law.

III. The Court Of Appeals Properly Refused To Permit Policies Enunciated In The Legislative History Accompanying Prior Versions Of 522(f) That Were Not Enacted To Control Over The Plain Language Of The Statute That Finally Emerged.

As a final reason for granting certiorari, petitioners devote two paragraphs to arguing that the Sixth Circuit's ruling frustrates the intent of Congress in enacting section 522(f). To understand the inappropriateness of this contention, a short history of exemptions under the Bankruptcy Reform Act of 1978 is necessary.

Under section 6 of the former Bankruptcy Act, first enacted in 1898, Congress left the subject of exemptions for individual debtors to state law and to federal non-bankruptcy law. Ch. 541, 30 Stat. 544 (1897-98) (codified at 11 U.S.C. §24) (repealed 1978). When confronted with the criticisms that this reference to state law promoted disuniformity among the states and unwisely delegated federal authority to the states, the Commission on the Bankruptcy Laws of the United States in its study of the bankruptcy laws in 1973 proposed an entirely federal exemption statute, with no role for state law. *Report of the Commission on The Bankruptcy Laws of The United States,* H.R. Doc. No. 93-137, 93rd Cong. 1st Sess., pt. 2, §4-503 (1973). The next year, in 1974, the National Conference of Bankruptcy Judges offered the "Judge's Bill" that would give a debtor a

choice—he could select either the federal slate of exemptions or the existing state exemptions.

Neither of these initial proposals emerged from the Congress intact. The House of Representatives ultimately adopted the Judges' proposal allowing debtors an election, while the Senate completely rejected the Commission's notion of federal exemptions, passing a bill retaining the old act's total state law reference. *Compare* H.R. 8200, 95th Cong., 2nd Sess., §522 (1977) *with* S. 2266, 95th Cong., 2nd Sess. §522 (1977).

Finally, at the last minute a compromise—now enacted as 11 U.S.C. §522—was reached: the debtor would have a choice between a slate of federal exemptions and his state's exemptions, but each state would be granted the authority to deny its domiciliaries the federal exemptions and to allow them use of the state exemptions only. The *Congressional Record,* H11095, daily ed. September 28, 1978, reports:

> Section 522 of the House amendment represents a compromise on the issue of exemptions between the position taken in the House bill and that taken in the Senate Amendment.... The States may, by passing a law, determine whether the Federal exemptions will apply as an alternative to State exemptions in bankruptcy cases.

See generally Hertz, *Bankruptcy Code Exemptions: Notes on the Effect of State Law,* 54 Am. Bankr. L.J. 339, 341 (1980).

It is therefore in the context of the realities of political compromise that section 522 must be viewed. With this "grain of salt" in mind, the Sixth Circuit surveyed the legislative history proferred by petitioners:

> By enacting the 'opting out' scheme without limitation, the legislators expresed their preference for state control of exemptions. We cannot say in the face of the statutory language that Congress intended that §522(f) should limit the states in their choice of the types of property interests

> debtors could exempt. The Courts below erred because they placed almost exclusive emphasis on legislative history supporting the original version of §522 as adopted by the House of Representatives. *That version was not the law that was finally passed. The legislative history which supports the rejected version is not particularly persuasive on the meaning of the final version.* When the language itself is clear, it should be followed in preference to legislative history supporting a different statute.

717 F.2d at 284 (emphasis added). Petitioners' argument is reminiscent of Justice Frankfurter's skeptical observation on the popular tendency of resorting to legislative history: "only when legislative history is doubtful do you go to the statute." Frankfurter, *Some Reflections on the Readings of Statutes,* 47 Colum. L. Rev. 527, 543 (1947). This Court need not concern itself when a court of appeals chooses a statute's plain meaning over the legislative history of proposals that Congress never enacted.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

Lawrence R. Ahern, III
Richard J. McAfee

Attorneys for Respondent,
Credithrift of America, Inc.

Counsel:
MILLER & MARTIN
10th Floor, Volunteer Bldg.
Chattanooga, Tennessee 37402
(615) 756-6600